Tenggara Gugusan Holidays Sdn Bhd v Public Prosecutor

HIGH COURT (KUALA TERENGGANU) — CRIMINAL APPEAL NO 42–14 OF 2000

NIK HASHIM J

28 JANUARY 2003

Criminal Law — *Environmental Quality Act 1974 — s 34A(6) — Appeal against conviction — Failure to submit EIA report and obtain approval of Director General before carrying out prescribed activity — Whether the words 'Any person' under s 34A of the Act referred to the owner and not the appellant — Whether the appellant was rightly convicted*

Words and Phrases — *'Any person' — Meaning of — Environmental Quality Act 1974 s 34A(6)*

The appellant was convicted and fine RM20,000 by the sessions court judge for carrying out construction of coastal resort facilities ('the project'), a prescribed activity under O 17(a) of the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 ('the Order'), without submitting an environmental impact assessment report ('the EIA report') to the Director General of Environmental Quality and getting his approval thereof as required under s 34A of the Environmental Quality Act 1974 ('the Act'). The appellant appealed against the conviction. Learned counsel for the appellant argued that the appellant was not liable for the offence as the company was only carrying out the project on behalf of the owner. The words 'Any person' under s 34A of the Act referred to the owner and not the appellant. The issue before the court was whether the appellant was rightly convicted.

Held, dismissing the appeal:

(1) The prescribed activity in the present appeal was the construction of more than 80 coastal chalets by the appellant. Section 34A(2) imposes a duty on any person intending to carry out any of the prescribed activities to submit an EIA report before any approval for the carrying out of such activities is granted. Unless and until such report is submitted and approved by the Director General, no person would be allowed to carry out such activity (see pp 511H–512A).

(2) It was the appellant developer and not the owner who carried out the prescribed activity by constructing the 100 chalets without first submitting the EIA report to and approved by the Director General. Ownership was not the ingredient of the offence. Thus, the appellant was rightly convicted by the sessions court (see p 512C).

A [**Bahasa Malaysia summary**

Perayu telah disabitkan dan didenda sebanyak RM20,000 oleh hakim mahkamah sesyen kerana melakukan projek pembinaan resort persisiran pantai ('projek tersebut'), yang mana ia adalah satu aktiviti berjadual di bawah A 17(a) Perintah Kualiti Alam Sekeliling (Aktiviti B Berjadual) (Penilaian Kesan Alam Sekeliling) 1987 ('Perintah tersebut'), tanpa menghantar laporan kesan alam sekeliling ('laporan EIA') kepada Ketua Pengarah Kualiti Alam Sekeliling dan seterusnya mendapatkan kebenaran beliau seperti yang dikehendaki di bawah s 34A Akta Kualiti Alam Sekeliling 1974 ('Akta tersebut'). Perayu merayu terhadap sabitan tersebut. Peguam perayu yang bijaksana C menghujahkan bahawa perayu tidak bersalah bagi tujuan kesalahan tersebut kerana syarikat tersebut hanyalah menjalankan projek tersebut bagi pihak tuanpunya. Perkataan 'Any person' di bawah s 34A Akta tersebut ditujukan kepada tuanpunya dan bukan perayu. Isu di hadapan mahkamah adalah sama ada perayu telah disabitkan dengan betul.

D

Diputuskan, menolak rayuan:

(1) Aktiviti yang ditetapkan dalam rayuan semasa adalah pembinaan lebih daripada 80 chalet persisiran pantai oleh perayu. Seksyen 34A(2) mengenakan satu kewajipan ke atas sesiapa yang berniat E untuk menjalankan apa-apa aktiviti berjadual agar menyerahkan satu laporan EIA sebelum apa-apa kelulusan untuk menjalankan aktiviti-aktiviti sedemikian dibenarkan. Kecuali dan sehingga laporan tersebut diserahkan dan diluluskan oleh Ketua Pengarah, tiada sesiapa dibenarkan menjalankan aktiviti-aktiviti sedemikian (lihat ms 511H–512A).

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(2) Ia adalah pemaju perayu dan bukan pemilik yang menjalankan aktiviti berjadual tersebut dengan membina 100 chalet tanpa terlebih dahulu menyerahkan laporan EIA kepada dan diluluskan oleh Ketua Pengarah. Pemunyaan bukan satu unsur kesalahan tersebut. Oleh itu, perayu telah disabitkan dengan betul oleh G mahkamah sesyen (lihat ms 512C).]

Notes

For cases on Environmental Quality Act 1974 s 34A(6), see 4 Mallal's Digest (4th Ed, 2000 Reissue) para 432.

H

Legislation referred to

Environmental Quality Act 1974 s 34A(2), (6), (8)
Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 O 17(a)
Interpretation Acts 1948 and 1967 s 3

I

Hasnan bin Hamzah (*Hasnan Hamzah*) for the appellant.
Yaacub bin Hj Chik (Deputy Public Prosecutor) for the respondent.

Nik Hashim J: The appellant company, Tenggara Gugusan Holidays Sdn Bhd, was convicted and fined RM20,000 and in default of payment of fine to one year of imprisonment by the Sessions Court Judge, Kuala Terengganu for carrying out the construction of coastal resort facilities with more than 80 rooms, a prescribed activity ('the project') without a report of assessment on the impact on the environment ('the EIA report') submitted to and approved by the Director General of Environmental Quality under s 34A of the Environmental Quality Act 1974 ('the Act'), read together with O 17(a) of the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 ('the Order'). The sentence was stayed pending appeal. The charge reads:

> Bahawa kamu pada 14 September 1996 jam lebih kurang 10.00 pagi bertempat di lot-lot 989, 1659, 1660, 2376, 3167 dan 4111, Kampung Pulau Kerengga, Mukim Pulau Kerengga, Daerah Marang, di Negeri Terengganu Darul Iman, didapati telah siap menjalankan pembinaan pembangunan tambahan kompleks peranginan Marang Resort & Safaris pada tahun 1995 yang mengandungi 100 unit chalet di kawasan pantai. Di dalam pembinaan kemudahan-kemudahan tempat peranginan tersebut yang mempunyai lebih daripada 80 bilik di kawasan pantai adalah tanpa terlebih dahulu mendapat kelulusan Laporan Penilai Kesan Kepada Alam Sekeliling atau Environmental Impact Assessment (EIA) daripada Ketua Pengarah Kualiti Alam Sekeliling. Pembinaan pembangunan projek ini adalah merupakan aktiviti di dalam Jadual 17(a), Perintah Kualiti Alam Sekeliling (Aktiviti Yang Ditetapkan) (Penilaian Kesan Kepada Alam Sekeliling) 1987 (PU(A) 362/87).
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> Dengan ini kamu telah melakukan suatu kesalahan di bawah s 34A(6) Akta Kualiti Alam Sekeliling, 1974 (Pindaan) 1985 (Akta A 636) dan boleh dihukum di bawah s 34A(8), Akta Kualiti Alam Sekeliling 1974 (Pindaan) 1996 (Akta A953).

The facts were not in dispute. On 14 September 1996, a team of environmental quality officers, led by SP1, visited the project known as Marang Resort & Safaris at Kampong Pulau Kerengga, Marang and they found there were 100 units of coastal chalets with more than 80 rooms at the site. The chalets were constructed by the appellant and were completed in 1995. It was in evidence that the EIA report was prepared by a team of consultants led by SP3 and was completed only on 8 July 1996 and submitted to the Director General on 13 July 1996 and was approved on 29 October 1996. It is thus clear from the facts that the EIA report was approved well after the completion of the project.

In his appeal against the conviction, learned counsel for the appellant argued that the appellant was not liable for the offence as the company was only carrying out the project on behalf of its owner, Marang Resort & Safaris. And the words 'Any person' under s 34A(6) refers to the owner and not to the appellant, which was only the developer of the project. The appellant, however, abandoned the appeal against the sentence.

After hearing the parties, I, on 15 January 2003 dismissed the appeal and affirmed both the conviction and sentence and ordered the appellant to pay the fine forthwith.

A The issue before the court was whether the appellant was rightly convicted.

In considering the appeal, the following provisions are relevant which need to be noted. They are:

B (i) Section 34A(2) of the Act states:

Any person intending to carry out any of the prescribed activities shall, before any approval for the carrying out of such activity is granted by the relevant approving authority, submit a report to the Director General. The report shall be in accordance with the guidelines prescribed by the Director General and shall contain an assessment of
C the impact such activity will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment.

(ii) Section 34A(6) provides:

Any person intending to carry out a prescribed activity shall not carry
D out such activity until the report required under this section to be submitted to the Director General has been submitted and approved.

(iii) And s 34A(8) states:

Any person who contravenes this section shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand
E ringgit or to imprisonment for a period not exceeding five years or to both and to a further fine of one thousand ringgit for every day that the offence is continued after a notice by the Director General requiring him to comply with the act specified therein has been served upon him. (Emphasis added.)

F There are many activities which require the submission of the EIA report to the Director General before any approval for the carrying out of such activities could be granted, and these activities are prescribed as prescribed activities in the Schedule to the Order, which came into force on 1 April 1988. The relevant Order in this case is O 17(a) which is now reproduced:

G 17 RESORT AND RECREATIONAL DEVELOPMENT:
(a) Construction of coastal resort facilities or hotels with more than 80 rooms.
(b) ...
(c) ...
(d) ....

H The prescribed activity in the present case was the construction of more than 80 coastal chalets by the appellant. Section 34A(2) is mandatory in its terms by reason of the word 'shall' in the section. So also is s 34A(6). Section 34A(2) imposes a duty on any person intending to carry out any of the prescribed activities to submit an EIA report before any approval for the carrying out of such activities is granted, and such report must contain an
I assessment of the impact of the prescribed activity will have on the environment and the proposed measures to be taken in order to prevent, reduce or control the adverse impact on the environment. Unless and until

such report is submitted and approved by the Director General, no person will be allowed to carry out such activity.

In this case, even though the EIA report was subsequently approved by the Director General, the appellant could not escape from being liable for the offence as s 34A under which the appellant was charged states very clearly that any person, which includes the appellant by virtue of s 3 of the Interpretation Acts 1948 and 1967 which defines a 'person' to include a body of persons, corporate or unincorporate, who carries out the prescribed activity prescribed under O 17(a) of the Order without first submitting the EIA report to and approved by the Director General, is guilty of an offence under s 34A(8) of the Act. What was in despite in the instant case was who carried out the prescribed activity. In this case, it was the appellant developer and not the owner Marang Resort & Safaris, which carried out the prescribed activity by constructing the 100 chalets without first submitting the EIA report to and approved by the Director General. Ownership is not the ingredient of the offence. Thus, in my judgment, the appellant was rightly convicted by the sessions court.

Hence, the appeal was dismissed.

Appeal dismissed.

Reported by Zahid Taib